

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

UNITED STATES OF AMERICA,

**Case No. 8:03-CR-77-T-30TBM**

v.

SAMI AMIN AL-ARIAN, et al.,

Defendants.

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**SAMI AL-ARIAN'S SECOND MOTION FOR CONTINUANCE**

COMES NOW, the Accused, SAMI AMIN AL-ARIAN, by undersigned counsel, and, pursuant to Local Rule 3.09, respectfully moves this Honorable Court for the entry of an Order continuing the currently scheduled trial date of April 4, 2005 to July 11, 2005. In support of the foregoing, counsel state as follows:

1. On October 21, 2004, the Accused filed his first Motion for Continuance and incorporates that Motion herein by reference.

**Discovery Abuse**

2. Counsel for the Accused has complained, both in pleadings and on the record before the Magistrate Judge, that a strategic onslaught of discovery production by the United States Attorney would take place shortly before trial. Unfortunately, we have not been proven wrong. Since January 1, 2005, 9 Discovery Letters sent from the United States Attorney has introduced hundreds of thousands of items of new discovery to the

defense, including translations of FISA facsimiles and conversations, websites and seized documents into the discovery pool that is ongoing.

3. As examples of the recent flood of discovery in this case, consider the following:

- a) On January 18, 2005, the government provided 112 new translations of evidence, which was “still subject to technical revisions”; we have not yet received the new revisions.
- b) On February 7, 2005, the government, in four separate discovery letters, provided lists of new foreign documents, CDS and mirror image copies of “removable media seized during various searches”. Some of the materials could not be duplicated exactly because they contained “bad sectors.” These searches occurred 10 years ago and 2 years ago; one is moved to question the reason for such a delay for production of this evidence and, further, whether evidence has been permanently corrupted.
- c) On February 18, 2005, 369 draft translations of facsimiles, websites, seized documents “still subject to technical revision” were provided; we have not yet received the new revisions.
- d) On February 22, 2005, a box of 64 duplicate cases, 7 CDs and 472,239 call records arrived at counsel’s office. The government indicated “five more cassettes were yet to be produced”.

4. On February 4, 2005, the government provided defense counsel with a new Master Discovery Index which augmented its previous submission by nearly 500 pages, bringing the total number of pages in the Index to nearly 900.
5. As reflected in these examples of discovery production, a plethora of new translations of FISA intercepts has been only recently provided, information that, arguably, the government has had in its possession even before the Indictment in this case.

#### **Accused's Access to Counsel Deprived**

6. There is little disagreement that the overwhelming majority of evidence in this case involves Dr. Al-Arian, either in the form of phone conversations, facsimiles, and seized evidence from his home and offices. Therefore, Dr. Al-Arian can best assist the defense in assessing the evidence against him.
7. However, Dr. Al-Arian's access to defense counsel has been limited, at best, and completely prohibited, at worst.
8. During Dr. Al-Arian's most recent incarceration at USP Coleman, he was denied access completely to his attorneys for 25 days during two separate lockdown periods, for security issues which did not involve Dr. Al-Arian. There were no phone calls and no visits allowed between the Accused and his attorneys.
9. Even outside the time of the lockdown, Dr. Al-Arian's access to counsel was significantly impeded. As an example, requests by Dr. Al-Arian to phone his attorneys were ignored by prison staff. Only some requests by

counsel would be accommodated; however, those phone calls were limited to 15 minutes during which time Dr. Al-Arian was shackled, unable to take notes.

10. After seeking relief from the Magistrate Judge on these issues, Dr. Al-Arian was soon relocated to Orient Road Jail.

#### **Limitation of Discovery Review by Accused**

11. Since his relocation, At Orient Road Jail, Dr. Al-Arian has not had the use of a listening device that would allow him to listen to the hundreds of CDs provided in discovery.
12. At USP Coleman, Dr. Al-Arian had been denied meaningful and consistent review of the CDs since September 2004. The excuses offered by the prison were that they were understaffed and were too busy to recharge the batteries for the listening devices for Dr. Al-Arian. As a consequence, Dr. Al-Arian has had less than 10 hours of audio review of the CDs in the last 6 months.

#### **Opportunity of Counsel to Adequately Prepare for Trial**

13. In the last two weeks alone, Counsel for the Accused has been sent, as previously discussed, a plethora of new translations, hundreds of thousands of call records, boxes of CDs and cassettes. It is simply impossible to adequately review and analyze all of this evidence in time for the trial date of April 4, 2005.
14. On Thursday, February 24, 2005, counsel retrieved approximately 322 juror responses, totaling over 7, 500 pages of juror questionnaires sent

out in this case. The Court has scheduled a review of those questionnaires this Thursday and Friday, during the same time that counsel is preparing for oral argument on Motions to Suppress. It is improbable that counsel will be able to meaningfully evaluate all of the juror responses in time for the pretrial conference in light of all the other trial preparation.

15. Counsel for the Accused entered their Notice of Appearance on October 29, 2003. As of this writing, they have had 15 months to prepare for a trial on the lead defendant in a case which the government contends involved a conspiracy that began nearly 20 years ago; in contrast, one of the ‘minor’ defendants, Hatim Fariz, has had the Office of the Federal Public Defender as counsel for the last 24 months since the indictment of February, 2003. This Court recognized that eighteen months was the minimum amount of time necessary to adequately prepare pretrial motions and prepare for trial if diligent. See. Doc. 162, page 11, footnote 16.

#### **Juror Responses**

16. In a preliminary review of a portion of responses to the juror questionnaires, a disturbing pattern has emerged which will most likely require the defense to move for a Change of Venue.
17. The overwhelming majority of responses has revealed a jury pool that is arguably polluted by a number of factors.
18. As one factor, the recent Senatorial campaign between Betty Castor and Mel Martinez figured largely in juror responses, leading them to the conclusion that Dr. Al-Arian was guilty and financed terrorism at the

University of South Florida, an allegation that Mr. Martinez repeated throughout his campaign.

19. Many responses evidenced an attitude of virulent racism, commenting on the color and hygiene of “Arabs.”
20. One potential juror wanted to give sodium pentothal to Dr. Al-Arian to ‘get the whole truth out.’
21. Nearly all the responses reviewed believed Dr. Al-Arian was guilty and they could not set aside their feelings in order to consider the evidence fairly.
22. Nearly all the responses reviewed would not accept the protections of the Fifth Amendment.
23. Nearly all the responses reviewed cited a severe financial hardship which would prevent them from serving in a 6 month long jury trial.
24. In all likelihood, when all the responses have been analyzed, counsel for the Accused will need to move for a change of venue to assure a process of integrity, which involves a fair jury panel.
25. Counsel seeks leave to further augment the record for a continuance at oral argument at the pending pretrial conference scheduled for March 3 and 4.

WHEREFORE, the Accused requests this Honorable Court to grant the Motion to Continue until July 11, 2005.

Dated: 28 February 2005

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> day of October, 2004, a true and correct copy of the foregoing has been furnished, by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Kevin Beck, Assistant Federal Public Defender, M. Allison Guagliardo, Assistant Federal Public Defender, counsel for Hatim Fariz; Bruce Howie, Counsel for Ghassan Ballut, and by U.S. Mail to Stephen N. Bernstein, P.O. Box 1642, Gainesville, Florida 32602, counsel for Sameeh Hammoudeh.

/s/ Linda Moreno  
Linda Moreno  
Attorney for Sami Al-Arian